

I, Martin G. Walker, Ph.D., provide the following supplemental expert report:

1. I have been retained as an expert consultant by the Post-Confirmation Trust for Fleming Companies, Inc. I have been asked to review certain documents, electronic files, declarations and memoranda regarding Plaintiff Wayne Berry's Motion for Reconsideration or in the Alternative Rule 60(b) Relief for Fraud on the Court, and, if possible, render opinions relating to these papers. This report is based on my personal knowledge and experience as well as my investigation in this matter, and reflects my expert opinions on certain issues to which I could testify if asked.

**I. SUMMARY OF FINDINGS.**

2. I found that the facts do not support Berry's arguments, which are based on incompetent forensic analysis.

3. I received a copy of a database retrieved from storage sent to Berry. I will refer to this database as the "Stored Copy Database." I compared it to an electronic snapshot of the database produced by the PCT to Berry in September, 2005 on the "Before" images. I noted that the snapshot was last written on May 22, 2003. Thus I will refer to this database as the "May 22, 2003 Database." I compared the copyrighted elements of these databases as well as the data contained in the databases (which are not copyrighted). I found that these databases were identical in that they had the identical structure, identical copyrightable elements and contained identical data.

4. I found Berry's purported "analysis" of the differences between the two databases to be badly flawed. If Berry had wanted to demonstrate that the Stored Copy Database represented new information, he should have compared the copyrightable structure to the May 22, 2003 Database. Had he done that, he would have determined that the databases were identical. Instead, Berry's lawyer compared the Stored Copy Database to the 1993 FCS database that was known to be different. Not surprisingly, Berry's lawyer found differences between the databases. The analysis performed by Berry's lawyer caused thousands of false positive for "differences" between the two databases to appear. In addition, Berry's lawyer counted as "differences" additions of data which have nothing to do with any copyrighted elements of the database. No